

**Citicorp Industrial Credit, nc.**

A Citibank Affiliate

399 Park Avenue  
New York, N.Y.  
10043



11402  
RECORDATION NO. .... Filed 1425

JAN 22 1980 - 10 22 AM

INTERSTATE COMMERCE COMMISSION

January 17, 1980

No. **O-022AC18**

Date JAN 22 1980

Fee \$ 50.00

ICC Washington, D. C.

Secretary  
Interstate Commerce Commission  
Washington, DC 20523

Dear Sir:

Enclosed for recording please find the original and two copies of a duly executed and acknowledged mortgage between Citicorp Industrial Credit, Inc., Lender, and NIM Leasing Corp., Borrower. NIM Leasing Corp. is a New Jersey corporation having its principal place of business at Foot of Hawkins Street, P.O. Box 5304, Newark, New Jersey 07105. Citicorp Industrial Credit, Inc. is a Delaware corporation with its principal place of business at 399 Park Avenue, New York, New York 10043.

I have enclosed a check for \$50 to cover the recording fees. Please return the original document to me at the above address.

Very truly yours,

CITICORP INDUSTRIAL CREDIT, INC.

By: Kenneth A. Raskin  
Kenneth A. Raskin  
Counsel

RECEIVED  
JAN 22 1980  
FEB 1 1980

Donna Lilly



**Interstate Commerce Commission**  
Washington, D.C. 20423

1/22/80

OFFICE OF THE SECRETARY

Kenneth A. Raskin  
Citicorp Industrial Credit, Inc.  
399 Park Avenue  
New York, N.Y. 10043

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/22/80 at 10:30am, and assigned re-recording number(s). 11402, 11403, 11404, 11405, 11406

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

=====

MORTGAGE

Dated as of December 28, 1979

among

CITICORP INDUSTRIAL CREDIT, INC.,  
as Lender

and

NIM LEASING CORP.  
as Borrower

=====

(Covering 140 XF And XM Boxcars)

=====

Recordation No. \_\_\_\_\_  
Filed and Recorded with the Interstate Commerce  
Commission pursuant to Section 11303 of Title 49 of the  
United States Code on \_\_\_\_\_ at \_\_\_\_\_.

11402  
RECORDATION NO. \_\_\_\_\_ FILED 1425  
JAN 22 1980  
INTERSTATE COMMERCE COMMISSION

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## MORTGAGE

This MORTGAGE dated as of December 28, 1979 among CITICORP INDUSTRIAL CREDIT, INC. ("Lender") and NIM LEASING CORP. ("Borrower").

### W I T N E S S E T H :

WHEREAS, Naporano Iron and Metal ("Naporano") and Hillsdale County Railway Co., Inc. ("Hillsdale") entered into a lease agreement dated as of February 1, 1978, as addended ("Hillsdale Lease"), wherein and whereby Naporano agreed to lease to Hillsdale and Hillsdale agreed to lease from Naporano seventeen (17) 40' rehabilitated XM boxcars and twenty-three (23) 50' rehabilitated XM boxcars (collectively, "Hillsdale Equipment"); and

WHEREAS, Naporano has assigned all of its right, title and interest in the Hillsdale Lease and Hillsdale Equipment to Borrower, pursuant to an assignment dated December 20, 1979 ("Hillsdale Assignment"); and

WHEREAS, Hillsdale and Lender have entered into an Agreement of Subordination and No Set-Off by Lessee dated December 28, 1979 ("Subordination Agreement"); and

WHEREAS, Naporano and McHugh Brothers Heavy Hauling Company, Inc., Lessor and Operator of New Hope and Ivyland Railroad Company ("New Hope") entered into a lease agreement dated as of November 27, 1979, ("New Hope Lease"), wherein and whereby Naporano agreed to lease to New Hope and New Hope agreed to lease from Naporano up to two hundred (200) 50' rehabilitated XF boxcars ("New Hope Equipment"); and

WHEREAS, Naporano has assigned all of its right, title and interest in the New Hope Lease and New Hope Equipment to Borrower pursuant to an assignment dated December 20, 1979 ("New Hope Assignment"); and

WHEREAS, Naporano and Georgia-Pacific Corporation ("GP") entered into an agreement dated the 19th day of October 1979 ("GP Use Agreement") wherein and whereby Naporano agreed to provide the New Hope Equipment to GP for its exclusive benefit and use pursuant to the terms and conditions thereof; and

WHEREAS, Naporano has assigned all of its right, title and interest in the GP Use Agreement to Borrower pursuant to an assignment dated December 20, 1979 ("GP Assignment"); and

WHEREAS, the Hillsdale Assignment, the New Hope Assignment and the GP Assignment are hereinafter collectively referred to as the "Assignments"; and

WHEREAS, the Borrower wishes to borrow from the Lender and the Lender wishes to lend to the Borrower the principal sum of \$1,415,200 to be secured by collateral as set forth herein and subject to the terms and conditions herein contained; and

WHEREAS, the Lender and Naporano are entering into a Guaranty dated as of December 28, 1979 (the "Guaranty") pursuant to which Naporano will guaranty the obligations of the Borrower pursuant to the terms, conditions and limitations contained therein;

NOW THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

#### SECTION 1. Agreement to Make Loan

Subject to the terms and conditions of this Mortgage, the Lender agrees to lend to the Borrower on or before January 31, 1980, or such earlier date, as the parties hereto may mutually agree upon (the "Closing Date"), One Million, Four Hundred Fifteen Thousand and Two Hundred Dollars (\$1,415,200) ("Loan"). The Loan shall be paid by the Lender to the Borrower in immediately available funds in New York, New York, or upon such other terms as the parties hereto may mutually agree.

#### SECTION 2. Security

(a) Grant of Security Interest. As security for the due and punctual payment of the principal of and premium, if any, and interest on the Note issued pursuant to Section 7 hereof according to its terms and effect and the performance and observance by the Borrower and Naporano of all the representations, warranties and covenants made by each of them in this Mortgage, the Guaranty or in any agreement,



document or certificate delivered in connection herewith or therewith, the Borrower hereby mortgages, assigns, transfers and grants to the Lender a security interest in the following ("Collateral"):

(1) Subject to the reservations set forth in Section 3 hereof, all of the Borrower's right, title and interest in and to the Hillsdale Lease and the New Hope Lease, (collectively, "Leases"), and the GP Use Agreement and all payments, including, without limitation, all payments of rentals, mileage charges, straight car hire payments or otherwise due or to become due thereunder;

(2) All of the Borrower's right, title and interest in and to the New Hope Equipment and the Hillsdale Equipment (collectively, "Equipment"), any accessions thereto and all proceeds thereof; and

(3) Subject to the reservations set forth in Section 23 hereof, all of the Borrower's right, title and interest in and to the Car Hire Charge Account, as defined in said Section 23.

TO HAVE AND TO HOLD all the aforesaid properties, rights and interests unto the Lender, its successors and assigns forever, nevertheless, for the use and purposes and with the power and authority and subject to the terms and conditions set forth in this Mortgage.

(b) Payments Under The Agreements. The Borrower agrees to direct Hillsdale and New Hope (collectively, "Lessees") to make all payments to be made by them under the Leases directly to the Lender pursuant to Section 27 hereof or in accordance with the Lender's instructions until such time as the Borrower's obligations hereunder and under the Note have been discharged. The Borrower agrees that should it receive any such payments directed to be made to the Lender or any proceeds of or with respect to the Equipment or as the result of the sale or other disposition thereof, it will promptly forward such payments to the Lender or in accordance with the Lender's instructions. The Lender agrees to apply payments from time to time received by it (from the Lessees, GP, the Borrower or otherwise) with respect to the Equipment, the Leases, or the GP Use Agreement in the manner provided in Section 27 hereof.

(c) Release of Security Interest in Equipment.  
In the event a release by the Lender of the security interest in the Equipment or any part thereof which constitutes security for the Note shall be necessary or desirable in order to enable the Borrower to carry out any action

required or permitted by this Mortgage, the Lender shall execute the same upon receipt of a certificate in form and substance satisfactory to the Lender, executed by the Borrower to the effect that all necessary actions have been or are being taken in connection with the proposed action to comply with the terms of this Mortgage and that all documents necessary to perfect, protect and preserve the security interest created by this Mortgage with respect to such additional property, if any, which is to be subjected to the security interest of this Mortgage have been duly authorized and properly executed and have been, or are being, delivered to the Lender.

(d) Release of Lender's Security Interest. Upon receipt by the Lender of all amounts owing to it under this Mortgage, the Note and the Guaranty,

(1) the mortgage and security interest and all other rights granted by this Mortgage shall cease and become null and void and all of the property, rights and interests granted as security for the Note shall revert to and revest in the Borrower without any other act or formality whatsoever, and

(2) the Lender shall, at the request and at the expense of the Borrower, execute and deliver to the Borrower, such termination statements or other instruments as shall be requisite to evidence the satisfaction and discharge of this Mortgage and the mortgage and security interest hereby created, to release or reconvey to the Borrower all the right, title and interest conveyed to the Lender hereunder, and to release the Borrower from its covenants herein contained.

(e) Power of Attorney. The Borrower hereby appoints the Lender the Borrower's attorney, irrevocably, with full power of substitution, to ask, require, demand, collect, compound and give acquittance for any and all payments due and to become due under or arising out of the Leases or the GP Use Agreement or the ownership, management, use, lease or other operation of the Equipment, to enforce compliance by the Lessees and GP with all the terms and provisions of the Leases and the GP Use Agreement, and to take any action (including, but not limited to, the filing of financing statements or other instruments or documents evidencing the mortgage and security interest granted to the Lender hereby and the drawing of checks or other instruments or orders), file any claims or institute any proceedings which the Lender may deem to be necessary or appropriate to protect and preserve the interest of the Lender in the Collateral, the Leases and the GP Use Agreement.

(f) Further Assurances. The Borrower agrees, that at any time and from time to time, upon the written request of the Lender, its successors or assigns, the Borrower will

promptly and duly execute and deliver any and all such further instruments and documents as the Lender, its successors or assigns, may reasonably request so as to carry out and effectuate this Mortgage and the intent hereof, including, without limitation, obtaining and maintaining its perfected security interest in the Collateral and enabling the Lender to obtain the full benefits of the assignments of the Leases and the GP Use Agreement provided in Section 3 and 4 hereof, respectively, and the rights and powers therein granted.

### SECTION 3. Assignment of Leases

(a) The Borrower hereby assigns, transfers, and sets over unto the Lender, as collateral security for the payment and performance of the obligations of the Borrower under this Mortgage and the Note and the obligations of Naporano under the Guaranty, the Leases and all of its rights, powers, privileges and remedies thereunder.

(b) Notwithstanding the provisions of paragraph (a) of this Section, the Borrower shall be entitled, so long as no Default or Event of Default (as defined in Section 21 hereof) has occurred and is continuing and subject to the terms and provisions of Sections 17 and 21 hereof, to give any notice of an event of default under the Leases, or either of them, to the Lessees and/or to terminate said Leases, or each of them, pursuant to their terms, and, concurrently with the Lender, to exercise all of the rights of the Borrower to enforce the obligations of the Lessees under the Leases, or either of them.

(c) Notwithstanding any provision of this Mortgage which may be to the contrary, the Borrower shall remain fully liable under the Leases to perform all of its obligations thereunder, and the Lender, its successors or assigns, shall have no obligation or liability under the Leases by reason of or arising out of this Mortgage, nor shall the Lender, its successors, or assigns, be required or obligated in any manner to perform or fulfill any obligation of the Borrower under or pursuant to the Leases, or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, its successors or assigns, or to press or file any claim or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it, its successors or assigns, may have been entitled at any time or times, provided that the Lender shall, as soon as practicable, fully inform the Borrower promptly in writing of any such matters of which it has actual knowledge.

(d) The Borrower does hereby warrant and represent that it has not assigned or pledged, and hereby covenants

that it will not assign or pledge, so long as any amount owing under the terms of this Mortgage, the Notes or the Guaranty remains unpaid and outstanding, any of its right, title or interest in or to the Leases or either of them to anyone other than the Lender, its successors or assigns and that it will not take or omit to take any action, the taking or omission of which might result in the alteration, amendment, modification, or impairment of the Leases or this Mortgage or of any of the rights created by any of such instruments except as expressly provided in the Leases.

(e) The assignment effected by this Section shall take effect on the Closing Date and the powers and authorities granted to the Lender, its successors or assigns, herein, having been given for valuable consideration, are hereby declared to be irrevocable.

(f) In the event that the Lender has actual notice of an event of default under the Leases or either of them, the Lender will give prompt notice thereof to the Borrower.

(g) Upon demand of the Lender, the Borrower agrees to furnish to the Lender copies of all notices, statements, documents, or schedules received by it under the Leases and the Lender shall cause similar copies to be delivered to the Borrower if received by the Lender.

(h) The rights of the Lender to the entire unpaid balance of the Note, the payments required to be made into the Car Hire Charge Account, and any other payments to be made to the Lender under this Mortgage, the Note or the Guaranty shall not be subject to any defense, setoff, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of the Lender with respect to the Equipment nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Borrower, the Lessees, GP or any other person by the Lender. The provisions of this paragraph shall not prevent the Lessees, or either of them, from asserting any claims separately against the Borrower.

(i) The obligations of the Lessees under the Leases, including without limitation, the obligation to pay the rental charges described therein shall not be subject to any reduction, abatement, defense, set-off, counterclaim or recoupment for any reason whatsoever, which however, shall not prevent the Lessees from asserting any claims separately against the Borrower.

#### Section 4. Assignment of GP Use Agreement.

(a) The Borrower hereby assigns, transfers, and

sets over unto the Lender, as collateral security for the payment and performance of the obligations of the Borrower under this Mortgage and the Note and the obligations of Naporano under the Guaranty, the GP Use Agreement and all of its rights, powers, privileges, and remedies thereunder.

(b) Notwithstanding the provisions of paragraph (a) of this Section, the Borrower shall be entitled, so long as no Default or Event of Default (as defined in Section 21 hereof) has occurred and is continuing, to exercise all of the rights of the Borrower under the GP Use Agreement, subject to the terms and provisions of Sections 17 and 21 hereof.

(c) Notwithstanding any provision of this Mortgage which may be to the contrary, the Borrower shall remain fully liable under the GP Use Agreement to perform all of its obligations thereunder, and the Lender, its successors or assigns shall have no obligation or liability under the GP Use Agreement by reason of or arising out of this Mortgage, nor shall the Lender, its successors, or assigns be required or obligated in any manner to perform or fulfill any obligation of the Borrower under or pursuant to the GP Use Agreement, or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, its successors or assigns, or to press or file any claim or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it, its successors or assigns, or to which it, its successors or assigns, may have been entitled at any time or times, provided that the Lender shall, as soon as practicable, fully inform the Borrower promptly in writing of any such matters of which it has actual knowledge.

(d) The Borrower does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as any amount owing under the terms of this Mortgage, the Note or the Guaranty remains unpaid and outstanding, any of, its right, title or interest in or to the GP Use Agreement to anyone other than the Lender, its successors or assigns and that it will not take or omit to take any action, the taking or omission of which might result in the alteration, amendment, modification, or impairment of the GP Use Agreement or this Mortgage or of any of the rights created by either of such instruments.

(e) The assignment effected by this Section shall take effect on the Closing Date and the powers and authorities granted to the Lender, its successors or assigns, herein, having been given for valuable consideration, are hereby declared to be irrevocable.

(f) In the event that the Lender has actual notice of a default under the GP Use Agreement, the Lender will

give prompt notice thereof to the Borrower.

(g) Upon demand of the Lender, the Borrower agrees to furnish to the Lender copies of all notices, statements, documents, or schedules received by it under the GP Use Agreement and the Lender shall cause similar copies to be delivered to the Borrower if received by the Lender.

(h) The rights of the Lender to the entire unpaid balance of the Note, the payments required to be made into the Car Hire Charge Account, and any other payments to be made to the Lender under this Mortgage, the Note or the Guaranty shall not be subject to any defense, setoff, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of the Lender with respect to the Equipment nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Borrower, Naporano, GP or any other person by the Lender. The provisions of this paragraph shall not prevent GP from asserting any claims separately against the Borrower.

#### SECTION 5. Repayment of the Loan.

(a) The Borrower shall repay the Loan, together with interest thereon at the rate and subject to the terms set forth below, in 60 monthly payments of principal and interest on the 21st day of each month of each year, commencing February 21, 1980, until paid, and in the amounts set forth in the amortization schedule attached to the Note issued pursuant to Section 7 hereof ("Amortization Schedule"), except that the last such payment shall be in an amount sufficient to discharge all unpaid principal of, premium, if any, and accrued interest on, the Loan, in full. ~~Interest only shall be payable on~~

In addition to the payments described above, the Borrower shall pay to the Lender on the Closing Date the sum of \$10,000, the amount payable to the Car Hire Charge Account, in the manner and subject to the terms and provisions set forth in Section 23 hereof. The unpaid principal balance of the Loan shall bear interest at the rate per annum equal to 12.75% from and including the Closing Date to but excluding the date payment in full of the Loan is made. The Borrower covenants that each payment made by the Borrower pursuant to this paragraph shall be accompanied by notice identifying the party making such payment or on behalf of which such payment is being made and that it will cause each other party which makes a payment required to be made pursuant to this paragraph to accompany each such payment with notice identifying the party making such payment or on behalf of which such payment is being made.

(b) Interest on the Loan and all other amounts outstanding under this Mortgage shall be determined on the basis of a 360-day year composed of twelve (12) 30-day

months, with periods of less than a full calendar month being calculated on the basis of actual days elapsed.

(c) The Borrower will pay interest, to the extent permitted by applicable law, at a rate equal to eighteen percent (18%) per annum or such lesser amount as shall be legally enforceable, upon all payments remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

(d) All payments provided for in this Mortgage shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall be paid pursuant to the terms of Section 27 hereof. Except as provided in Sections 6 and 13 hereof, the Borrower shall not have the privilege of prepaying any portion of the Loan prior to the date it becomes due.

#### SECTION 6. Prepayment.

(a) Borrower may prepay all but not less than all of the outstanding principal balance of the Loan on any date on which a payment is due ("Payment Date") pursuant to the Note, as defined in Section 7 hereof. Notwithstanding the foregoing, the amount payable by the Borrower in the event of a Casualty Occurrence shall be determined pursuant to the provisions of Section 13 hereof.

(b) Within 30 days after the Lender gives written notice of any default under the GP Use Agreement or the Leases or either of them pursuant to clause (1) of Section 21(a) hereof, or any declaration of the unpaid balance of the Loan due and payable pursuant to clause (2) of Section 21(a) hereof, Naporano, may, upon not less than 5 days prior written notice to the Lender, purchase the Lender's rights and interest in, to and under this Mortgage and the other agreements referred to herein for an amount equal to the unpaid principal balance of the Loan as of the date of such purchase plus accrued interest to, but not including, such date plus any other amounts then due and owing to the Lender under this Mortgage. Upon due payment to the Lender of the amount owing pursuant to this paragraph, the Lender shall transfer to Naporano (without representations or warranties) the Note then outstanding and all of its rights, (except those to indemnification for losses, damages, injuries, liabilities, claims and demands, and expenses in connection therewith, which may be suffered or incurred by the Lender) in, to and under this Mortgage and the other agreements referred to herein.

#### SECTION 7. Issuance of Note.

(a) On the Closing Date the Borrower shall, as evidence

of its obligation to repay the Loan pursuant to the terms hereof, execute and deliver to the Lender a promissory note dated the Closing Date (the Promissory Note and any shall be herein referred to as the "Note") in the principal amount of the Loan to be made on the Closing Date and containing the terms and provisions for repayment set forth in Section 5 hereof. The Note shall be payable to the Lender or its assigns and shall be in the form attached hereto as Exhibit A. Upon payment of all amounts due and owing under the Note, such fact shall be indicated on the Note and the Note shall be returned to the Borrower.

(b) In the event any portion of the Loan shall be repaid prior to maturity by reason of a Casualty Occurrence pursuant to Section 13 hereof, the Lender shall surrender to the Borrower the Note then held by the Lender against receipt from the Borrower of a new Note in the form of Exhibit A hereto which evidences the principal amount of such Loan outstanding following such payment, together with a revised schedule of payments, calculated as provided in Sections 5 and 13 hereof.

(c) Prior to the payment in full of the Note as aforesaid, the Lender shall be entitled to all payments due hereunder and under the Note without being required to surrender the Note. However, the Lender agrees to make appropriate notation on the Note before any transfer thereof to reflect all payment of principal and interest theretofore received.

(d) If any Note shall become mutilated or shall be destroyed, lost or stolen, the Borrower shall, upon the written request of the holder of such Note, execute and deliver in replacement thereof, a new Note payable in the same original principal amount and dated the same date as the Note so mutilated, destroyed, lost or stolen. The Borrower shall make a notation on each new Note of the amount of all payments of principal and premium, if any, theretofore made, or the date to which such payments have been made, on the Note so mutilated, destroyed, lost or stolen and the date to which interest on such old Note has been paid. If the Note being replaced has been mutilated, such Note shall be delivered to the Borrower and shall be cancelled by it. If the Note being replaced has been destroyed, lost or stolen, the holder of such Note shall furnish to the Borrower the indemnity agreement of such owner to save the Borrower harmless from any loss, however remote, including claims for principal of, premium, if any, and interest on the purportedly destroyed, lost or stolen Note, together with evidence of the destruction, loss or theft of such Note and of the ownership thereof; provided, however, that if the holder of such Note is the Lender or is a nominee for the Lender or is an affiliate of the Lender, the written statement of the Lender or such nominee or affiliate shall be sufficient proof of such destruction,



loss or theft and an indemnity agreement of such party signed by a duly authorized officer thereof delivered to the Borrower shall be sufficient security and indemnity. For purposes of this Section, an affiliate of any specified person shall mean any other person either owning or controlling, directly or indirectly, 50% or more of any class of voting shares of such specified person or controlled by or under common control with such specified person.

SECTION 8. Representation of the Lender.

The Lender represents that it is acquiring its interest in the Note for its own account for investment and not with a view to, or for sale in connection with, any distribution thereof, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control.

SECTION 9. Assignment by the Lender.

The Lender may assign, without the consent of the Borrower, Naporano or any other party, any or all of its rights and obligations in, to and under the Leases, the GP Use Agreement, the Subordination Agreement, the Note and this Mortgage. In the event of any such assignment and upon written notice to the Borrower, Naporano, GP and the Lessees, the Lender's assignee shall, to the extent of such assignment, be entitled to the benefits of, and to receive and enforce performance of, all of the covenants and agreements to be performed (a) by the Borrower under this Mortgage and the Note as though the Lender's assignee were named herein as the Lender, (b) by the Borrower under the GP Use Agreement as though the Lender's assignee were named therein and (c) by the Lessees under the Leases, as though the Lender's assignee were named therein; and shall, to the extent of such assignment, be subject to all of the duties and obligations of the Lender hereunder.

SECTION 10. Representations, Warranties and Agreements of the Borrower.

(a) Representations and Warranties. The Borrower represents and warrants that:

(1) Due Organization. It is a corporation duly organized and validly existing in good standing under the laws of the State of New Jersey and has the corporate power and authority to enter into the Assignment, this Mortgage and the Note and to perform its obligations under this Mortgage and the Note and to perform its obligations

under this Mortgage and the Note as well as under the Assignments, the Leases, the GP Use Agreement.

(2) Due Authorization. This Mortgage, the Note, and the Assignments have been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery of this Mortgage, the Assignments, and the GP Use Agreement by the other parties thereto, are legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms.

(3) Enforceability. The Leases and the GP Use Agreement are legal, valid and binding agreements, enforceable against the Borrower in accordance with their respective terms.

(4) No Violation. The execution and delivery by it of this Mortgage, the Note and the Assignments are not, and the performance by it of its obligations under these agreements as well as under the Leases and the GP Use Agreement will not be, inconsistent with its charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to it and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration with or the taking of any action in respect of or by, the Interstate Commerce Commission or any other Federal, state, local or Canadian governmental authority or agency, except such as have been obtained, given or accomplished.

(5) Title to the Equipment. On the Closing Date, the Borrower will have legal title to each Unit of Equipment free and clear of all claims, liens, security interests and other encumbrances ("Liens") of any nature, except only the rights of the Lender under this Mortgage, the Note and the Guaranty, the rights of GP under the GP Use Agreement and the rights of the Lessees under the Leases. The Borrower, at its own cost and expense, agrees to defend the title to such Units against the demands of all persons.

(6) Performance Will Not Create Liens. The performance by it of its obligations under this Mortgage, the Note, the Assignments, the Leases and the GP Use Agreement will not subject the Collateral, including, without limitation, the Equipment, the Leases or the GP Use Agreement, to any Lien (other than the Liens provided in this Mortgage) under any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound.

(7) Totality of Agreement. This Mortgage, the Note, the Leases, the Subordination Agreement, the Assignments, the GP Use Agreement and the Guaranty comprise the totality

of the agreement between all parties regarding the financing of the Equipment by the Borrower.

(8) Prior Perfected Security Interest. On the Closing Date, subject to the filing of this Mortgage, the Leases, the Assignments, the GP Use Agreement and the Guaranty for recordation with the Interstate Commerce Commission in accordance with the provisions of 49 U.S.C. 11303, the Lender will have a duly perfected prior security interest under the laws of the United States in the Collateral, including, without limitation, the Equipment, the rights of the Borrower under the GP Use Agreement and the Leases.

(9) No Litigation. There are no actions, suits, proceedings or investigations pending, or to the knowledge of the Borrower, threatened, before any court, regulatory commission, board or other governmental authority which question the validity of this Mortgage, the Note, the Assignments, the Leases or the GP Use Agreement, or which might affect the ability of the Borrower to perform its obligations hereunder or thereunder, or which might result, either individually or in the aggregate, in a material adverse change in the business, operations, affairs or condition of the Borrower, except as previously disclosed in writing to the Lender.

(10) Full Disclosure. There is no fact known to the Borrower which materially adversely affects or in the future may (so far as the Borrower can now foresee) materially adversely affect the business, operations, earnings, affairs, prospects or assets which has not been disclosed herein or in the other documents, certificates and statements furnished to the Lender in writing specifically for use in connection with the transactions contemplated by this Mortgage.

(11) Design of Equipment. The design, quality, and component parts of each Unit of the Equipment conform to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads (the "AAR") reasonably interpreted as being applicable to railroad equipment of the character of such Unit.

(12) Compliance with the GP Use Agreement and Leases. The Borrower has complied with all terms and provisions of the GP Use Agreement and the Leases applicable to it and has performed all obligations and taken all actions required to be performed or taken by it under the GP Use Agreement and the Leases, respectively. To the knowledge of the Borrower, Naporano has complied with all terms and provisions of the GP Use Agreement and the Leases and has performed all obligations and taken all actions required to be performed or taken by it under the GP Use Agreement and the Leases, respectively, and the Lessees have complied

with all terms and provisions of the Leases and have performed all obligations and taken all actions required to be performed or taken by them under the Leases.

(b) Agreements. In addition to the other covenants contained in this Mortgage, the Borrower agrees that:

(1) Financial Information. The Borrower shall furnish to the Lender:

(A) within 90 days after the close of each fiscal year of the Borrower, a balance sheet and statement of income of the Borrower as at the end of such year, setting forth in each case the comparable figures for the previous fiscal year, accompanied by an opinion shall state that such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied, that the examination by such accountants has been made in accordance with generally accepted auditing standards and that such accountants have obtained no knowledge of the occurrence of any Default under this Mortgage; provided, however, that if the Borrower does not in any year receive or obtain financial statements certified by independent certified public accountants, such financial statements shall be certified by the chief financial officer of the Borrower as complete and correct;

(B) to the extent prepared by or for the Borrower, within 45 days after the end of each of the first three fiscal quarters of the Borrower, a balance sheet and statement of income of the Borrower as at the end of each such quarter, certified as complete and correct, subject to changes resulting from year-end adjustments, by the principal financial officer of the Borrower;

(C) within the period set forth in (A) above, a certificate of the President of the Borrower stating that he has reviewed the activities of the Borrower and, to the best of his knowledge, (i) no Default or Event of Default under this Mortgage has occurred during such period, or (ii) if such Default or Event of Default has occurred, specifying the nature and period of continuance thereof and the actions which the Borrower has taken or proposes to take with respect thereto;

(D) upon the occurrence of any Event of Default under this Mortgage, a certificate of the President of the Borrower stating that such an Event of Default has occurred, the Nature and period of continuance thereof, and the actions which the Borrower has taken or proposes to take with respect thereto; and

(E) with reasonable promptness, any other information which the Lender shall reasonably request.

(2) Place of Business. The Borrower represents and warrants that its place of business and chief executive office, as such terms are used in the Uniform Commercial Code, are located in the State of New Jersey. The Borrower shall not change the location of its place of business or chief executive office without giving prior notice to the Lender of such change and the new location of its place of business or chief executive office.

SECTION 11. Conditions Precedent to the Loan.

(a) The obligation of the Lender to make the Loan to the Borrower on the Closing Date is subject to the fulfillment on or before the Closing Date of the following conditions precedent:

(1) No Default or Event of Default under this Mortgage shall have occurred and be continuing on such Closing Date.

(2) This Mortgage, the Guaranty, the Subordination Agreement, the GP Use Agreement and the Leases shall have been duly executed and delivered by the respective parties thereto.

(3) The Lender shall have received the counterpart or counterpart set delivered to the Interstate Commerce Commission of the Leases, the Subordination Agreement, the GP Use Agreement and the Guaranty.

(4) The Lender shall have received the Certificates of Acceptance with respect to the Units of Equipment which were executed and delivered by a duly authorized representative of New Hope and Hillsdale.

(5) The Lender shall have received evidence satisfactory in form and substance to it of the following:

(A) This Mortgage, the Guaranty and the GP Use Agreement have been duly filed for recordation; and

(B) The Lender has a duly perfected prior security interest under the laws of the United States in the Equipment, the GP Use Agreement and the Leases.

(6) The Lender shall have received favorable opinions, dated such Closing Date, addressed to it and satisfactory in form and scope to its counsel, of:

(A) Counsel for the Borrower to the effect set forth in subparagraphs (1) through (9) of paragraph (a) of Section 10 of this Mortgage; and

(B) Counsel for Naporano to the effect set forth in subparagraphs (1) through (6) of paragraph (a) of Section 4 of the Guaranty.

(7) The Lender shall have received certificates, dated such Closing Date, of:

(A) the Borrower to the effect that the representations and warranties of the Borrower set forth in this Mortgage are true and correct in all material respects on and as of such Closing Date with the same effect as though made on and as of such Closing Date, that no default or Event of Default under the Mortgage shall have occurred and be continuing on such Closing Date, and that attached thereto are true and complete copies of the Leases and the GP Use Agreement and that the foregoing are in full force and effect on the Closing Date and have not been modified or amended in any respect; and

(B) Naporano to the effect that the representations and warranties of Naporano set forth in the Guaranty are true and correct in all material respects on and as of such Closing Date with the same effect as though made on and as of such Closing Date.

(8) The Borrower shall have executed and delivered to the Lender the Note.

(9) The Borrower shall have deposited the sum of \$10,000 in immediately available funds in the Car Hire Charge Account.

(10) The Lender shall have received such other documents, certificates and opinions including, but not limited to bills of sale and evidence of insurance as it shall reasonably request.

(b) Each opinion of counsel delivered pursuant to this Section may (1) be subject to appropriate qualifications as to applicable bankruptcy or similar laws affecting enforcement of creditors' rights generally, (2) be subject to appropriate qualifications concerning the award by courts of relief in lieu of specific performance of contractual provisions, (3) rely as to matters relating to the laws of jurisdictions other than the United States and the jurisdiction in which counsel is admitted to practice on an opinion of qualified local counsel acceptable to the Lender or its counsel, provided, however, that relying counsel's opinion must state that the addressee of relying counsel's opinion may rely upon such opinion of local counsel, (4) be limited with respect to indentures, orders, mortgages, contracts or other instruments of which counsel has knowledge, (5) omit any reference to the requirement of the consent or approval of, giving of notice to, registration with or taking of any action in respect of or by any Canadian governmental authority

or agency and (6) state that the opinion is subject to qualification regarding the effect of certain laws and judicial decisions upon the enforceability of certain rights and remedies provided in this Mortgage, provided, however, that the opinion shall further state that none of such laws in effect on the date of such opinion and none of such judicial decisions make the rights and remedies provided in this Mortgage, taken as a whole, inadequate for enforcing the security interest provided thereby or the realization of the benefits thereof.

## SECTION 12. Taxes.

All payments to be made by the Borrower hereunder will be free of expense to the Lender for collection or other charges and will be free of expense to the Lender with respect to the amount of any local, state, federal or foreign taxes (other than income taxes payable with respect to interest and premium on the Note) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by the Collateral or this Mortgage (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "Impositions"), all of which Impositions the Borrower assumes and agrees to pay on demand. The Borrower will also pay promptly all Impositions which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Lender solely by reason of its security interest therein and will keep at all times all and every part of the Equipment free and clear of all Impositions which might in any way affect the security interest of the Lender or result in a lien upon any part of the Equipment; provided, however, that the Borrower shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Lender, adversely affect the rights of the Lender in or to the Equipment or otherwise under this Mortgage. If any Impositions shall have been charged or levied against the Lender directly and, to the extent funds are not otherwise available, paid by the Lender, the Borrower shall reimburse the Lender upon presentation of an invoice therefor, and any amounts so paid by the Lender shall be secured by and under this Mortgage, and shall bear interest at the same rate as the Loan from the date of payment by the Lender to and including the date of reimbursement by the Borrower. The payment of any such Imposition by the Lender shall not effect a cure of any Default under Section 21 hereof arising as a result of the failure of the Borrower to pay such Imposition.

SECTION 13. Maintenance, Casualty Occurrences, Insurance.

(a) The Borrower will at all times and at its own expense, maintain and keep the Equipment or cause the Equipment to be maintained and kept, in good repair and efficient condition and working order, eligible for interchange with other railroads pursuant to AAR Interchange Standards. The Borrower shall supply all parts, services and other items required in the operation and maintenance of the Equipment. All parts, replacements, substitutions and additions to or for any Equipment shall immediately become Equipment and shall constitute accessions to the Equipment subject to all the terms and conditions of this Mortgage.

(b) In the event that any Unit of the Equipment shall be or become worn out, lost, stolen, destroyed, irreparably damaged, from any cause whatsoever, taken or requisitioned by condemnation or otherwise, or there shall occur any other termination of use of any Unit regardless of the cause (each such occurrence being herein called a "Casualty Occurrence"), the Borrower shall, promptly after it shall have determined that such Unit has suffered a Casualty Occurrence, cause the Lender to be fully notified in regard thereto (including without limitation, a full description of the Casualty Occurrence) and within sixty (60) days thereafter, the Borrower shall pay to the Lender a sum equal to the aggregate Casualty Value (as hereinafter defined) of such Unit as of the date of such payment. Concurrently with each payment of Casualty Value pursuant to this Section, the Borrower shall file, or cause to be filed with the Lender a certificate setting forth the Casualty Value of each Unit as to which such payment is being made. As long as the Lender has not given written notice to the Borrower of any termination of the GP Use Agreement or the Leases pursuant to clause (2) of Section 21(a) hereof, or any declaration of the unpaid balance of the Loan due and payable pursuant to clause (1) of Section 21(a) hereof, any money received by the Lender pursuant to this paragraph shall be applied to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Loan, and the Lender will promptly furnish to the Borrower a promissory note containing a revised schedule of payments of principal and interest thereafter to be made and the Borrower shall execute and deliver to the Lender such promissory note in exchange for the cancellation by the Lender and delivery to the Borrower of the Note. As used in this Mortgage, the term "Note" shall include the promissory note issued pursuant to this paragraph upon a payment of Casualty Value in substitution for any Note. Any money received by the Lender after it has given any such written notice of termination or declaration shall be distributed pursuant to paragraph (c) of Section 27 hereof.



(c) Upon payment by the Borrower to the Lender of the Casualty Value of any Unit of the Equipment having suffered a Casualty Occurrence, such Unit shall be released from the mortgage and security interest granted hereunder, without further transfer or action on the part of the Lender, except that the Lender, if requested by the Borrower, will execute and deliver to the Borrower, at the expense of the Borrower, an appropriate instrument confirming such release of all the Lender's right, title and interest in such Unit, in form suitable for recordation, in order that the Borrower may make clear upon the public records the title of the Borrower to such Unit.

(d) The Casualty Value of each Unit of the Equipment suffering a Casualty Occurrence (the "Casualty Value") shall be deemed to be that portion of the Loan attributable to such Unit remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Mortgage), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Loan in respect to Equipment made pursuant to Section 5 hereof shall be deemed to be a payment on each Unit of the Equipment in like proportion as the original equipment cost of such Unit bears to the aggregate original equipment cost of the Equipment.

(e) Any condemnation payments, insurance proceeds or other payments resulting from a Casualty Occurrence received by the Lender in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Borrower to the Lender in respect of a Casualty Occurrence pursuant to paragraph (b) of this Section. If the Lender shall receive any such payments in respect of such Units suffering a Casualty Occurrence after the Borrower shall have made full payment pursuant to this Section without deduction for such payments, or if such payments received by the Lender are in excess of the Casualty Value of the Unit, the Lender shall pay such payments or such excess, as the case may be, to the Borrower provided that no Default or Event of Default under this Mortgage shall have occurred and be continuing hereunder. All insurance proceeds received by the Lender in respect of any Unit or Units of Equipment not suffering a Casualty Occurrence shall be paid to the Borrower upon proof satisfactory to the Lender that any damages to such Unit in respect of which such proceeds were paid has been fully repaired, or shall be disbursed upon written request of Borrower to any third party in payment for such repairs.

(f) The Borrower shall cause to be procured, maintained and paid for, by itself or its designee, with reputable insurers acceptable to Lender, insurance in an amount at all times at least equal to the Casualty Value of the Units of Equipment then subject to this Mortgage, subject to a

deductible not to exceed One Thousand Dollars (\$1,000.00) per car, Two Thousand Dollars (\$2,000.00) per occurrence, insuring against loss and destruction of, and damage to, each such Unit arising out of theft, loss, damage, destruction, fire, windstorm, explosion, and all other hazards and risks ordinarily subject to extended coverage insurance, and against such other hazards and risks as are customarily insured against by companies owning or leasing property of a similar character and engaged in a business similar to that engaged in by the Borrower or Naporano.

(g) The Borrower shall further maintain or cause to be maintained with reputable insurers acceptable to the Lender public liability and property damage insurance with respect to the Equipment in amounts not less than the greater of (1) the amounts of insurance maintained by the Borrower, Naporano or the Lessees with respect to railroad equipment of a similar kind as the Equipment owned or leased by the Borrower, or (2) bodily injury and property damage liability insurance in an amount not less than \$5,000,000. Each liability insurance policy shall be primary without right of contribution from any other insurance which is carried by the Lender or the Borrower.

(h) The Borrower warrants that the foregoing insurance coverage shall be in effect at the time of execution of this Mortgage. Such insurance shall (1) name the Lender as an insured or an additional insured in addition to the Borrower with losses to be payable to the Lender, (2) provide that the policies will not be invalidated as against the Lender because of any violation of a condition or warranty of the policy or application therefor by the Borrower, GP or the Lessees and (3) provide that the policies may be materially altered or cancelled by the insurer only after at least ten (10) days prior written notice to the Lender and the Borrower.

#### SECTION 14. Reports and Inspections.

(a) As may be requested by the Lender from time to time hereunder, the Borrower shall cause to be furnished to the Lender to the extent that the Borrower shall receive the same from the Lessees and/or GP an accurate statement: (1) setting forth (A) the amount, description and numbers of all Units of the Equipment that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or (B) have been withdrawn from use pending repairs (other than running repairs), and (C) the dollar amount spent in the maintenance and repair of each Unit and such other information regarding the condition and state of repair of the Equipment as the Lender may reasonably request; and (2) stating that, in the case of all Equipment

repaired or repainted during the period covered by such statement, the numbers and markings required by Section 15 hereof have been preserved or replaced. The Lender shall have the right, by its agents, to inspect the Equipment and the records of the Borrower and any agent of Borrower with respect thereto at such reasonable times as the Lender may request during the term of this Mortgage.

(b) The Borrower shall also furnish, or cause to be furnished to the Lender on or before ninety (90) days following the end of its fiscal year in each year during the term of this Mortgage, commencing with the year 1980, audited financial statements, in addition to those to be provided pursuant to Section 10 hereof prepared in accordance with generally accepted accounting principles consistently applied, of Naporano and any successors or assigns thereof; provided, however, that if Naporano does not in any year receive or obtain financial statements certified by independent certified public accountants, such financial statements shall be certified by the chief financial officer of Naporano as complete and correct.

(c) The Borrower shall prepare, or cause to be prepared, and file, or cause to be filed, to the extent legally permitted, all reports (other than income tax returns), if any, relating to maintenance, registration and operation of the Equipment required to be filed by the Lender with any federal, state or other regulatory agency regarding the Equipment.

#### SECTION 15. Marking of Equipment.

(a) As soon as may be practicable the Borrower will cause each Unit of the Equipment to be kept numbered with the identifying number of the Lessee set forth in Annex 1 hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Mortgage to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT", or other appropriate words designated by the Lender, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lender's interest in the Equipment and its rights under this Mortgage. The Borrower will not permit any such Unit to be placed in operation or exercise any control or dominion over the same until such numbers and markings shall have been made thereon and will replace or will cause to be replaced promptly any such numbers and

marking which may be removed defaced or destroyed. The Borrower will not permit the identifying number of any Unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been delivered to the Lender and filed, recorded and deposited by or on behalf of the Borrower in all public offices where this Mortgage shall have been filed, recorded and deposited.

(b) Except as provided in the immediately preceding paragraph, the Borrower will not allow the name of any person, association or corporation to be placed on any Unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Borrower and/or GP and/or the Lessees or their respective affiliates.

#### SECTION 16. Compliance with Laws and Rules.

During the term of this Mortgage, the Borrower will comply, and will use its best efforts to cause GP, Naporano, the Lessees and every manager or user of the Equipment to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such user's operations involving the Equipment may extend, with the interchange rules of the AAR and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws or rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit of the Equipment, the Borrower will conform therewith at its own expense; provided, however, that the Borrower may in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lender, adversely affect the rights or security interest of the Lender under this Mortgage.

#### SECTION 17. Possession and Use.

(a) The Borrower, so long as no Event of Default shall have occurred and be continuing under this Mortgage, shall be entitled to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Mortgage.

(b) The Borrower hereby agrees that it will not exercise any of the remedies permitted in the case of any event of default under and as defined in the Leases or under and as may be defined in any subsequent lease, without the prior written consent of the Lender, which consent shall not be unreasonably withheld, and hereby further agrees to furnish to the Lender copies of all summons, writs, processes and other documents served by it upon the Lessees, GP or any subsequent lessee or served by the Lessees, GP or any subsequent lessee upon it in connection therewith. The GP Use Agreement, the Leases and any subsequent lease shall not be amended, modified or terminated by the Borrower, and no such subsequent agreement or lease shall be entered into by the Borrower, without the prior written consent of the Lender, which consent shall not be unreasonably withheld.

(c) So long as no Event of Default shall have occurred and be continuing under this Mortgage, the Equipment may, on and subject to all the terms and conditions of this Mortgage, be used (1) upon lines of railroad over which the Borrower or any affiliate has trackage or other operating rights or over which railroad equipment of the Borrower or any such affiliate is regularly operated pursuant to contract, (2) upon the lines of any railroad owned or operated by the Lessees or their affiliates, or upon lines of railroad over which the Lessees or any such affiliates have trackage or other operating rights, or over which railroad equipment of the Lessees or any such affiliates are regularly operated pursuant to contract, and (3) upon lines of railroad of connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements.

(d) Notwithstanding any other provisions of this Mortgage:

(1) the Borrower shall not use or permit the use of any Unit of the Equipment in any jurisdiction outside the United States of America unless instruments or documents which, to the satisfaction of the Lender and its counsel, evidence and perfect the security interest of the Lender have been duly filed, recorded or registered in such jurisdiction;

(2) the Borrower shall not at any time assign or permit the assignment of any Unit of the Equipment to service involving the regular operation or maintenance thereof outside the United States of America; and

(3) the Borrower shall not at any time permit more than ten percent (10%) of the Units to be located outside of the United States of America.

SECTION 18. Prohibition Against Liens.

(a) The Borrower will pay or discharge any and all sums claimed by any party from, through or under the Borrower or its successors or assigns which, if unpaid, might become a lien, charge, or security interest on or with respect to the Equipment or any Unit thereof, or on or with respect to the rights of the Borrower under the GP Use Agreement or the Leases, other than the security interest granted the Lender hereunder, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Lender, adversely affect the security interest of the Lender in or to the Equipment, the GP Use Agreement and the Leases and the payments due or to become due under each, or otherwise under this Mortgage. Any amounts paid by the Lender in discharge of liens, charges or security interests upon the Equipment or on the rights of Borrower under the GP Use Agreement or the Leases shall be secured by and under this Mortgage, and shall bear interest at the same rate as the Loan from the date of payment by the Lender to and including the date of reimbursement by the Borrower. The payment of any such amount shall not effect a cure of any Default under Section 21 hereof arising as a result of the failure of the Borrower to pay such amount.

(b) This covenant will not be deemed breached by reason of liens for taxes, assessments, or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

(c) The Borrower will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Borrower or its successors or assigns, not arising out of the transactions contemplated hereby (including tax liens arising out of the receipt of the income and proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any Unit thereof, or the Borrower's interest in the GP Use Agreement and the Leases and the payments to be made under each, but the Borrower shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Lender, adversely affect the security interest of the Lender in or to the Equipment or otherwise under this Mortgage or in and to the GP Use Agreement and the Leases and the payments to be made under each.

SECTION 19. Indemnities and Warranties.

(a) The Borrower agrees to indemnify, protect and hold harmless the Lender and its successors, agents, servants and assigns from and against all losses, damages, injuries, liabilities, claims, and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to reasonable counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of terms of this Mortgage or the transactions contemplated hereby, the ordering, acquisition, use, lease, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage, or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when the Equipment remains subject to this Mortgage except, however, any losses, damages, injuries, liabilities, claims, and demands whatsoever arising out of any tort or breach of warranty by the builder of the equipment, or resulting from the willful misconduct or gross negligence of the Lender. This covenant of indemnity shall continue in full force and effect notwithstanding the payment, in full, of the Loan or the termination of this Mortgage in any manner whatsoever.

(b) The Borrower will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Unit of or all the Equipment regardless of the cause of such damage, destruction or loss, except for damage, destruction or loss resulting from the willful misconduct or gross negligence of the Lender. The obligation of the Borrower to repay the Loan pursuant to the terms hereof shall not be subject to any claim, counterclaim, defense or set-off whatsoever which the Borrower may have against any manufacturer of the Equipment, GP, the Lessees or any other party, or the breach by any of such parties of any of their respective covenants and agreements in any document or instrument.

SECTION 20. Assignments.

(a) The Borrower will not (1) except as provided in Section 17 hereof, transfer the right to possession of any Unit of the Equipment or (2) sell, assign, transfer or otherwise dispose of its rights under this Mortgage without the prior written consent of the Lender. The Borrower shall at all times maintain its corporate existence, and it shall not consolidate with or merge into any other corporation or convey, transfer or lease substantially all of its assets as an entirety to any other Person (which means any individual, corporation, partnership, joint venture, association, trust,

unincorporated organization or government or agency thereof), without the prior written consent of the Lender.

(b) In the event of any assignment or successive assignments by the Lender, Borrower will, upon request by the Lender's assignee, change, or cause to be changed, the markings on each side of each Unit of the Equipment so as to be consistent with the interest of such assignee in the Equipment, to the extent necessary to conform to any requirements or the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of any such assignment shall be borne by the assignee.

#### SECTION 21. Events of Default.

(a) In the event that any one or more of the following events of default (each an "Event of Default") shall occur and be continuing:

(1) the Borrower shall fail to pay in full when due, any payment of principal and interest on the Loan, and payment to the Car Hire Charge Account or any other sum payable by the Borrower as provided in this Mortgage within ten (10) days after notice given to the Borrower;

(2) the Borrower shall, for more than thirty (30) days after the Lender shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Mortgage, the GP Use Agreement, the Leases or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to terms and provisions cannot be completed within thirty (30) days, the Borrower shall have failed to take the necessary steps to commence to cure the failure to comply or perform, such steps to be satisfactory to the Lender;

(3) any proceeding shall be commenced by or against the Borrower for any relief which includes, or might result in, any modification of the obligations of the Borrower hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit the readjustment of the obligations of the Borrower under this Mortgage,) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), if all the obligations of the Borrower under this Mortgage shall not have been



and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Borrower or for its property in connection with any proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

(4) the Borrower shall make or suffer any unauthorized assignment or any unauthorized transfer of the right to possession of any unit of the Equipment, and this Mortgage or any interest therein or on any Unit of Equipment, as the case may be, shall not be reassigned or retransferred within ten (10) days of written notice from the Lender to do so;

(5) a breach by GP in the performance of its duties under the GP Use Agreement (which breach shall have materially impaired or adversely affected the revenues generated by the Equipment) shall have occurred and be continuing for a period of thirty (30) days after notice from the Lender (hereinafter a "GP Use Agreement Default") and such GP Use Agreement Default shall continue for a period of ninety (90) days without the Borrower, with the written consent of the Lender, having terminated the GP Use Agreement, and entered into a new use agreement or otherwise provided for the use of the New Hope Equipment by a user, acceptable to the Lender in its sole and absolute discretion, upon terms acceptable to the Lender in its sole and absolute discretion;

(6) an event of default (as defined in either Lease) shall have occurred under either Lease and shall be continuing for sixty (60) days without the Borrower, with consent of the Lender, having terminated said Lease pursuant to the terms thereof, and entered into a new lease or otherwise provided for the use of the subject Equipment by a lessee or other user acceptable to the Lender, in its sole discretion, upon terms acceptable to Lender, in its sole and absolute discretion;

(7) a Unit shall be operated or allowed to operate without the insurance required by Section 13 hereof in full force and effect;

(8) Naporano shall fail to perform or observe any covenant or agreement to be performed by it, or it shall both fail to perform or observe any covenant or agreement to be performed by it, under the Guaranty, and such failure shall continue for 30 days after

written notice thereof from the Lender to Borrower and Naporano; or

(9) any representation or warranty made by the Borrower in this Mortgage or made by Naporano in the Guaranty shall prove to have been incorrect in any material respect when such representation or warranty was made or given;

then at any time after the occurrence of any Event of Default and so long as such event shall be continuing the Lender may, upon written notice to the Borrower, GP, the Lessees and Naporano, upon compliance with any mandatory legal requirements then in force and applicable to such action by the Lender, (A) cause the GP Use Agreement, (upon occurrence of an Event of Default under subparagraph (5) hereof) or the applicable Lease (upon occurrence of an Event of Default under subparagraph (6) hereof) as they relate to the subject Equipment and any other agreement with respect to the subject Equipment, or any Unit or Units thereof, then in effect immediately upon such notice to terminate with respect to the subject Equipment and/or (B) declare the entire unpaid balance of the Loan together with the premium, if any, and interest thereon then accrued and unpaid, together with all other amounts then due and owing under this Mortgage, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and premium and interest shall bear interest from the date of such Event of Default at the rate per annum specified in Section 5 hereof as being applicable to amounts remaining unpaid after becoming due and payable. Immediately upon any such declaration the Borrower shall pay to the Lender such unpaid balance of the Loan together with all other amounts then due and owing under this Mortgage. Upon an Event of Default, the Lender shall be entitled to recover judgment for the entire unpaid balance of the Loan, together with all other amounts due hereunder with interest as aforesaid, and to collect such judgment out of any property of the Borrower wherever situated. The Borrower shall promptly notify the Lender of any Default under this Mortgage of which it has knowledge. For all purposes of this Mortgage, the term "Default" shall mean any event which, with the giving of notice, lapse of time or both, would mature into an Event of Default.

(b) The Lender may, at its election, waive any Default or Event of Default and its consequences and rescind and annul any Default or Event of Default or notice of termination of the GP Use Agreement, the Leases or any such other agreement by notice to the Borrower in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such Default or Event of Default had occurred and notice of termination of the GP Use Agreement, the Leases or any such other agreement had been made or given.

Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Borrower that time is of the essence of this Mortgage and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent Default or Event of Default or impair any rights or remedies consequent thereon.

(c) If any Event of Default should occur hereunder, the Lender may thereafter make the payment or perform or comply with the agreement, the nonpayment, nonperformance or noncompliance with which caused such Event of Default, and the amount of such payment and the amount of the reasonable expenses of the Lender incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest at the rate calculated pursuant to paragraph (c) of Section 5 hereof, shall be payable by the Borrower upon demand by the Lender, and such action by the Lender shall not be deemed a cure or waiver of any Default or Event of Default hereunder.

## SECTION 22. Remedies.

(a) At any time during the continuance of an Event of Default, the Lender may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Lender, and subject to the rights, if any, of the Borrower, Naporano, the Lessees, or either of them and/or GP, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the Units thereof, without liability to return to the Borrower any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section expressly provided, and may remove the same from possession and use of the Borrower, GP, Naporano or the Lessees or any other person and for such purpose may enter upon the premises of the Borrower or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Borrower, subject to all mandatory requirements of due process of law.

(b) In case the Lender shall demand possession of the Equipment pursuant to this Mortgage and shall designate a reasonable point or points for the delivery of the Equipment to the Lender, the Borrower shall, at its own expense and risk as the Lender shall direct:

(1) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the AAR and all

railroads to which any Unit or Units of the Equipment have been interchanged to return the Unit or Units so interchanged) cause the Equipment to be placed upon such storage tracks of the Lessees, or either of them, or GP, as the Lender reasonably may designate; or, in the absence of such designation, as the Borrower or Naporano may select; provided, however, that such storage on the tracks of the Lessees will not be required if such storage will interfere with the operations of the railroad of the Lessees:

(2) permit the Lender to store the Equipment on such tracks or other premises at the risk of the Borrower without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by Lender; and

(3) cause the Equipment to be transported to any reasonable place on the lines of railroad operated by the Lessees or any of their affiliates or to any connecting carrier for shipment, all as directed by the Lender.

During any storage period, the Borrower will, at its own cost and expense, insure, maintain and keep each Unit in good order and repair and will permit the inspection of the Equipment by the Lender, the Lender's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Lender shall be entitled to a decree against the Borrower (but not against any officer, shareholder or agent of Borrower) requiring specific performance hereof and the Borrower hereby irrevocably appoints the Lender as attorney-in-fact to execute any and all documents, instruments and notices, in the name and on behalf of the Borrower, to cause the Equipment to be delivered hereunder or comply with the terms of any court decree. The Borrower hereby expressly waives any and all claims against the Lender and its agent or agents for damages of whatever nature in connection with any retaking of any Unit of the Equipment in any reasonable manner.

(c) At any time during the continuance of an Event of Default, the Lender, with or without retaking possession thereof, at its election and upon reasonable notice to the Borrower, and any other persons to whom the law may require notice of the time and place, may sell the Equipment or one or more of the Units thereof, free from any and all claims of the Borrower, or any other party claiming from, through or under the Borrower, at law or in equity, at public or private sale and with or without advertisement as the Lender may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale,

the Borrower should tender full payment of the total unpaid balance of the Loan, together with interest thereon accrued and unpaid and all other payments due under this Mortgage as well as expenses of the Lender in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Lender's reasonable attorney's fees, then in such event the Lender shall release its security interest in the Equipment. The proceeds of such sale or other disposition, less the attorney's fees and any other expenses incurred by the Lender in retaking possession of removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited to the amount due to the Lender under the provisions of this Mortgage.

(d) The Borrower shall be given written notice of such sale not less than ten days prior thereto by telegram or registered mail addressed as provided in Section 29 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Borrower to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the sale price offered by the intending purchaser or a better price. The Lender may bid for and become the purchaser of the Equipment, or any Unit thereof, so offered for sale. In the event that the Lender shall be the purchaser thereof, it shall not be accountable to the Borrower (except to the extent of surplus money received as hereinafter provided in this Section), and in payment of the purchase price therefor the Lender shall be entitled to have credited to the amount owing by it for such purchase price all sums due to the Lender hereunder.

(e) If an Event of Default has occurred and the Lender has accelerated the Loan under Section 21 hereof, the Borrower hereby appoints the Lender its exclusive marketing agent with respect to any and all interest of the Borrower in the Equipment, which appointment is coupled with an interest and is irrevocable. In its capacity as marketing agent hereunder, the Lender shall have the absolute right to sell, lease, transfer or otherwise dispose of all or any part of the Equipment, to any party whomsoever, as the Lender shall in the exercise of its reasonable discretion, deem advisable. In furtherance of the Lender's rights hereunder, the Borrower hereby agrees to execute any and all documents, agreements, instruments, releases and notices requested by the Lender to sell, lease, transfer or otherwise dispose of the Equipment, or any Unit thereof; and further hereby appoints the Lender as attorney-in-fact to execute any and all documents, instruments, notices or agreements for the sale, lease, transfer or other disposition of the Equipment, or any Unit, in the name and on behalf of the Borrower, including without limitation bills of sale and leases. In the event the Equipment is sold and/or leased, after an Event of Default and acceleration of the Loan, the Borrower hereby agrees and shall pay to the Lender an amount

equal to two and one-half percent (2 1/2%) of the pro-rata share of the outstanding principal balance of the Loan applicable to each such Unit sold or leased. The sums of money realized by the Lender hereunder shall be applied in accordance with the provisions of this Section.

(f) Each and every power and remedy hereby specifically given to the Lender shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Lender. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Lender in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or any acquiescence therein. Any extensions of time for payment hereunder or other indulgence duly granted to the Borrower, the Lessees, Naporano or GP shall not otherwise alter or affect the Lender's rights or the Borrower's obligations hereunder. The Lender's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Borrower's obligations or the Lender's rights hereunder with respect to any subsequent payments or default therein.

(g) If, after applying all sums of money realized by the Lender under the remedies herein provided, there shall remain any amount due to it under the provisions of this Mortgage, the Borrower shall pay the amount of such deficiency to the Lender upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Section 5 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Borrower shall fail to pay such deficiency, the Lender may bring suit therefor and shall be entitled to recover a judgment therefor against the Borrower. If, after applying as aforesaid all sums realized by the Lender, there shall remain a surplus in the possession of the Lender, such surplus shall be paid to the Borrower.

(h) The Borrower will pay all reasonable expenses, including attorney's fees, incurred by the Lender in enforcing its remedies under the terms of this Mortgage. In the event that the Lender shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Lender may recover reasonable expenses, including reasonable attorney's fees, and the amount thereof shall be included in such judgment.

(i) Except as herein agreed to the contrary, the foregoing provisions of this Section are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

SECTION 23. Car Hire Charge Account.

(a) As long as any of the principal balance of the Loan or any other amounts due the Lender under the terms of this Mortgage are unpaid and outstanding, the Borrower shall pay, or direct the Lessees and GP to pay to the Lender all car hire charges and other rentals, mileage charges, per diem charges and incentive per diem charges ("Car Hire Charges") when due pursuant to the Leases and the GP Use Agreement for each Unit of Equipment subject to this Mortgage on the date of such payment. These payments shall be received by the Lender and monies collected therefrom shall be applied to the amortization of the Loan pursuant to the Amortization Schedule annexed to the Note or any substitutions thereof pursuant to Section 6 and/or 13 of this Mortgage. All periodic Car Hire Charges, in excess of the scheduled periodic repayments of the Loan shall be held by the Lender in an interest bearing day-of-deposit-to-day-of-withdrawal account (the "Car Hire Charge Account") at Citibank, N.A., New York, New York. The terms of such account shall provide that withdrawals may be made from such account only upon written order executed by both the Lender and the Borrower. Such withdrawals shall be made subject to the terms and provisions of this Section. Interest credited to the Car Hire Charge Account shall remain part of the Car Hire Charge Account and may be used in the same manner, and subject to the same conditions, as amounts paid into such Account by the Borrower, the Lessees or GP.

(b) So long as no Default or Event of Default has occurred and is continuing, the Borrower, or Naporano on behalf of the Borrower, shall have the right, upon five (5) days prior written notice to the Lender, to withdraw funds from the Car Hire Charge Account when necessary to maintain the Equipment in the condition required and to provide insurance pursuant to Section 13 hereof. Such notice shall specify the Units for the maintenance, repair or insuring of which such funds will be withdrawn and shall describe the work to be performed on such Units with such funds. Upon receipt of proper and timely notice the Lender shall release such funds from the Car Hire Charge Account, and, to the extent such funds are then invested as set forth in subsection (a), the Lender shall execute such instruments as are required to withdraw funds from the account in which they are invested. Within thirty (30) days of the completion of such maintenance or the payment for such insurance, the Borrower or Naporano, on the Borrower's behalf, shall submit to the Lender evidence of the expenditure of the withdrawn funds for such maintenance, repairs or insurance.

(c) So long as no Default or Event of Default has occurred and is continuing and upon the condition that the amount in the Car Hire Charge Account equals or exceeds the total of (1) the outstanding principal balance of the Loan,

(2) the interest accrued but unpaid thereon, (3) all other amounts owing to the Lender pursuant to the provisions of this Mortgage, the Borrower may prepay the Loan pursuant to Section 6(a) hereof and pay all other amounts owing to the Lender under the provisions of this Mortgage using funds in the Car Hire Charge Account.

(c) Upon the occurrence of an Event of Default hereunder, the Lender may retain the amount in the Car Hire Charge Account and apply part or all of such amount to the payment of the outstanding principal of and interest on the Loan and costs and expenses of exercising or enforcing its rights under this Mortgage, as the Lender may determine in its sole discretion.

(d) Upon payment to the Lender of the full amount of the Loan plus all interest accrued thereon and all other amounts owing under this Mortgage and the performance of all the obligations and covenants of the Borrower contained herein, the amount, if any, in such Car Hire Charge Account shall be paid to the Borrower.

#### SECTION 24. Applicable State Laws.

(a) Any provision of this Mortgage prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Mortgage. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Borrower to the full extent permitted by law.

(b) Except as otherwise provided in this Mortgage, the Borrower, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more Units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Lender's rights under this Mortgage and any and all rights of redemption.

#### SECTION 25. Recording.

The Borrower will, from time to time, do and perform any other act and will execute, acknowledge, deliver, and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) or will cause to be filed, registered, deposited or recorded (and, whenever



necessary, refiled, reregistered, rerecorded or redeposited), at its expense any and all further instruments required by law or reasonably requested by the Lender for the purpose of proper protection in the United States of America or any foreign jurisdiction in which any Unit of Equipment may be used or located, to the satisfaction of the Lender and its counsel, of its security interest in the Collateral and its rights under this Mortgage or for the purpose of carrying out the intention of this Mortgage and any assignment hereof. The Borrower will promptly furnish to the Lender evidences of such filing, registering, depositing or recording and of such publication of notice of such deposit and an opinion or opinions of counsel with respect thereto, each satisfactory to the Lender and its counsel.

#### SECTION 26. Payment of Expenses.

The Borrower will pay all reasonable costs and expenses, payment of which shall not be illegal under any laws of the United States, and State or any foreign jurisdiction, incident to the drafting and negotiation of this Mortgage and certain agreements referred to herein and the closing of the transactions contemplated by this Mortgage, and all costs and expenses, including legal fees, which are incurred in connection with the filings and recordings made pursuant to Section 25 hereof and, if initialed or proposed by the Borrower, any supplement or modification to the Mortgage.

#### SECTION 27. Distribution of Funds.

(a) All amounts and moneys, resulting from the ownership management, use, lease, or other operation of the Equipment, whether as rental payments, mileage charges, car hire payments or otherwise, including, but not limited to, all amounts received from the Lessees under the Leases and from GP pursuant to the GP Use Agreement and all amounts payable by the Borrower under this Mortgage and by the Lessees under the Leases shall be paid directly to the Lender, at 399 Park Avenue, New York, New York 10043, Attention: Manager, Contracts Administration. Such moneys and amounts shall be paid to the Lender without any deduction or set-off whatsoever for amounts due other parties and in a manner so that the Lender has immediately available funds in New York, New York on the date each such amount is due and payable.

(b) Provided that the Lender has not given written notice to the Borrower, the Lessees, GP and Naporano of any termination of the GP Use Agreement or the Leases pursuant to clause (1) of Section 21(a) hereof or any declaration of the unpaid principal balance of the Loan due and payable

pursuant to clause (2) of Section 21(a), (1) all amounts received by the Lender, with the exception of payments of Casualty Occurrence which are to be paid to the Borrower under the terms of the fifth paragraph of such Section 13, shall be applied on the Payment Date next following receipt of any such amount as follows:

(A) first, to the payment to the Lender of the interest then due and payable on the Loan pursuant to the terms of this Mortgage and of the Note;

(B) second, to the payment to the Lender of the installment of principal of the Loan then due and payable pursuant to the terms of this Mortgage and of the Note;

(C) third, to the deposit in the Car Hire Charge Account of such amounts as are due and payable thereto under Section 23 hereof;

(D) fourth, to the payment to the Lender of any and all other amounts due and payable to it under this Mortgage, including, but not limited to amounts due and payable under the provisions of Sections 22 and 23 hereof; and

(E) fifth, the balance, if any, to the Borrower;

and (2) amounts representing payments of Casualty Value to the Lender shall be applied as set forth in paragraph (b) of Section 13 hereof and amounts representing condemnation payments, insurance proceeds and other payments resulting from a Casualty Occurrence shall be paid to the Borrower to the extent so provided by the terms of paragraph (e) of such Section 13.

(c) All amounts, including payments of Casualty Value, condemnation payments, insurance proceeds and other payments resulting from a Casualty Occurrence pursuant to Section 13 hereof, received by the Lender after it has given written notice of any termination of the GP Use Agreement or the Leases pursuant to clause (2) of Section 21(a) hereof, or any declaration of the unpaid principal balance of the Loan due and payable pursuant to clause (1) of Section 21(a) shall be applied upon receipt as follows:

(1) first, to the payment to the Lender of all amounts payable to it pursuant to Section 19 hereof;

(2) second, to the payment to the Lender of the interest then due and payable on the Loan pursuant to the terms of this Mortgage and of the Note;

(3) third, to the payment to the Lender, in

full, of the outstanding principal balance of the Loan pursuant to the terms of this Mortgage and of the Note;

(4) fourth, in the manner provided by subparagraph (1) (D) of paragraph (b) of this Section;

(5) fifth, in the manner provided by subparagraph (1) (E) of paragraph (b) of this Section.

SECTION 28. Survival of Representations and Warranties; Binding Effect; Entire Agreement.

(a) Survival. All agreements, representations and warranties contained in this Mortgage, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall continue in effect following the execution and delivery of this Mortgage and shall continue in effect so long as any amount owing under the terms hereof remains outstanding and unpaid.

(b) Binding Effect. All agreements, representations and warranties contained in this Mortgage, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith or from time to time thereafter shall bind the party making the same and its successors and assigns and shall inure to the benefit of each party for whom made and their respective successors and assigns.

(c) Entire Agreement. This Mortgage, the Note, the Leases, the GP Use Agreement, the Subordination Agreement, the Guaranty and the Assignments constitute the entire agreement of the parties hereto and thereto with respect to the subject matter hereof and thereof and supercede all prior understandings and agreements of such parties.

SECTION 29. Notices.

All communications and notices with respect to the transactions contemplated by this Mortgage shall be in writing and shall become effective when deposited in the United States mail, with proper postage for first-class mail, prepaid, addressed (a) if to the Lender, to 399 Park Avenue, New York, New York 10043, Attention: Manager, Contracts Administration; (b) if to the Borrower, to P.O. Box 5304, Newark, New Jersey 07105; and (c) if to Naporano, to P.O. Box 5304, Newark, New Jersey 07105; or at such other address as any party hereto may from time to time designate

by notice duly given in accordance with the provisions of this Section to the other parties hereto.

SECTION 30. Miscellaneous.

(a) Execution. This Mortgage may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which, when so executed and delivered, shall constitute a single instrument, but the counterpart or counterpart set, which shall be marked "Original", delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Lender shall be deemed the original counterpart and all other counterparts hereof shall be deemed duplicates thereof and shall be marked "Duplicate". Although this Mortgage is dated as of the date first above written for convenience, the actual dates of the execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto.

(b) Governing Law. This Mortgage shall be governed by, and be construed in accordance with, the laws of the State of New York, provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303, such additional rights arising out of the filing, recording, registering, or depositing of this Mortgage, the Leases, the Subordination Agreement, the GP Use Agreement and the Assignments and any rights arising out of the marking on the Units of Equipment.

(c) Choice of Forum. The Borrower, to the fullest extent permitted by law, (a) designates the United States District Court for the Southern District of New York, as a forum where any and all matters pertaining to this Mortgage may be adjudicated, and (b) by the foregoing designation, consents to the jurisdiction and venue of such Court for the purpose of adjudicating any and all matters pertaining to this Mortgage. Each party hereto not having an agent for service of process of record with the Secretary of State of the State of New York hereby irrevocably appoints the Secretary of State of the State of New York as the agent for service of process in any proceeding instituted hereunder and each party hereto agrees that service of process upon such agent, in accordance with the then-prevailing and applicable law as hereinabove agreed to, with a copy of such summons or other instrument mailed to such party by United States registered mail at the address specified in Section 29 hereof, shall, upon receipt by such party, constitute proper service on such party for all purposes without objections of any kind whatsoever. Notwithstanding the provisions of this paragraph, any party hereto shall also be entitled to institute legal proceedings to adjudicate matters pertaining to this Mortgage against the other in any other competent court.

(d) Amendments, Supplements, etc. Neither this Mortgage nor any of the terms hereof may be amended, supplemented, waived or modified (herein referred to as a "change") orally, but only by an instrument in writing signed by the party against which enforcement of such change is sought.

(e) Headings. The headings of the sections and paragraphs of this Mortgage have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Mortgage to be duly executed by their respective officers thereunto duly authorized as of the date set forth above.

CITICORP INDUSTRIAL CREDIT,  
INC.

By *William J. ...*  
Title *Vice President*  
Dated *1/18/80*

Attest: *Kenneth G. Rad...*

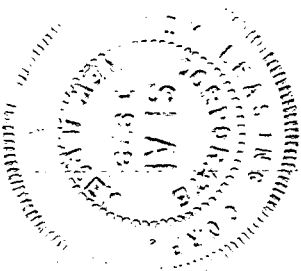
[Seal]

NIM LEASING CORP..

By *Joseph ...*  
Title *President*  
Date *1/17/80*

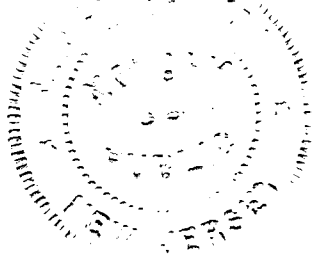
Attest: *...*

[Seal]



State of New ~~York~~ <sup>Jersey</sup> )  
County of ~~New York~~ <sup>Bergen</sup> ) SS.:

On this 17th day of January, 1980, before me personally appeared W. J. Wenzel, to me personally known, who being by me duly sworn, says that he is a Vice President of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the true corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



[Notarial Seal]

Nancy Arribi  
Notary Public  
NANCY ARRIBI  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES JULY 20, 1983

State of New ~~York~~ <sup>Jersey</sup> )  
County of ~~New York~~ <sup>Essex</sup> ) SS.:

On this 17 day of January, 1980, before me personally appeared Joseph Naporano, to me personally known, who being by me duly sworn, says that he is the President of NIM Leasing Corp., that the seal affixed to the foregoing instrument is the true corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Robert R. McAndrew  
Notary Public  
Attorney at Law  
State of New Jersey

[Notarial Seal]

# ANNEX 1

## EQUIPMENT SCHEDULE

porano hereby leases the following Boxcars to Hillsdale County Railway  
uant to that certain Lease Agreement dated as of February 1, 1978.

A.R.  
IG.

4

DESCRIPTION	NUMBERS	DIMENSIONS			DOORS WIDTH	NO. OF CARS	CASUALTY VALUE
		LENGTH	INSIDE WIDTH	HT.			
Box - Steel Code B105	601-614, 616, 618	40'4"	9'2"	10'5"	6'	16	\$8000.00
Box - Steel Code B107	635	40'6"	9'4"	10'5"	8'	1	\$8000.00
Box - Steel Code B209	641	50'6"	9'6"	10'6"	10'	1	\$10400.00
Box - Steel Code B209	650	50'7"	9'3"	10'5"	10'	1	\$10400.00
Box - Steel Code B209	670	50'6"	9'2"	10'6"	15'	1	\$10400.00
Box - Steel Code B209	660-661	50'6"	9'2"	10'6"	15'	2	\$10400.00
Box - Steel Code B209	636, 675- 684, 687, 688	50'7"	9'2"	10'5"	10'	13	\$10400.00
Box - Steel Code B209	637	50'9"	9'2"	10'5"	8'	1	\$10400.00
Box - Steel Code B209	638-639	50'7"	9'6"	10'11"	16'	2	\$10400.00
Box - Steel Code B209	685, 686	50'4"	9'2"	10'5"	15'	2	\$10400.00

# EQUIPMENT SCHEDULE

Apporano hereby leases the following Boxcars to New Hope & Ivyland R.R.  
 want to that certain Lease Agreement dated as of August 5, 1978.

A.R. - JH. - IG.	DESCRIPTION	NUMBERS	DIMENSIONS INSIDE			DOORS WIDTH	NO. OF CARS	CASUALTY VALUE
			LENGTH	WIDTH	HT.			
	BOX - STEEL Code A - 220	2001-2087	50'7"	9'2"	10'5'	10'	87	\$10400.00
	BOX - STEEL Code A - 220	2101-2108	50'4"	9'2"	10'5'	8'	8	\$10400.00
	BOX - STEEL Code A - 220	2201-2204	50'4"	9'2"	10'5'	8'	4	\$10400.00
	BOX - STEEL Code A - 220	2301	50'6"	9'2"	10'6'	8'	1	\$10400.00



EXHIBIT A

\$1,415,200.00

NIM LEASING CORP.

SECURED PROMISSORY NOTE

NIM LEASING CORP., a New Jersey corporation (the "Borrower"), for value received, hereby promises to pay to CITICORP INDUSTRIAL CREDIT, INC., or assigns, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, the principal sum of One Million, Four Hundred, Fifteen Thousand, Two Hundred Dollars (\$1,415,200.00) and to pay interest (computed on the basis of a year of twelve 30-day months, with periods of less than a full calendar month being calculated on the basis of actual days elapsed on the unpaid principal balance thereof at the rate per annum equal to 12.75% from and including the date of this Note to but excluding the date payment in full of the principal amount of this Note is made. Principal and

*gm* interest payments shall be made in installments on the ~~tenth~~ *21*  
*gm* day of each month in each year commencing February 21, 1980  
*gm* and ending February 21, 1985, except that the last such payment shall be in an amount sufficient to discharge all unpaid principal of, premium, if any, and accrued interest on, this Note, in full. The amount of each such installment shall be as set forth on the Amortization Schedule attached hereto, subject to adjustment as provided in the Mortgage dated as of December 28, 1979 between the Borrower and Citicorp Industrial Credit, Inc., as Lender (the "Mortgage").

This Note shall bear interest, to the extent permitted by applicable law, at the rate of 18.0% per annum ("Overdue Rate"), on any part of the principal hereof and, to the extent permitted by law, interest hereon, not paid when due for any period during which the same shall be overdue.

The principal hereof and premium, if any, and interest hereon shall be payable in immediately available funds in New York, New York, subject to the provisions of Section 27 of the Mortgage.

This Note is issued by the Borrower pursuant to the terms of the Mortgage. Reference is hereby made to the Mortgage for a statement of the rights of the holder of, and the nature and extent of the security for, this Note.

This Note is not subject to prepayment except upon the occurrence of certain events as provided in Sections 6 and 13 of the Mortgage.

In case an Event of Default under the Mortgage (as defined therein) shall occur and be continuing, the unpaid principal of this Note and accrued interest hereon may become or be declared due and payable in the manner, with the effect and subject to the conditions, provided in the Mortgage.

The Borrower waives presentment and demand for payment, notice of dishonor, protest and notice of protest of this Note, and shall pay all costs of collection when incurred, including reasonable attorney's fees.

The provisions of this Note shall inure to the benefit of and be binding upon any successor to the Borrower and shall extend to any holder hereof.

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized, as of the date hereof.

Dated:

NIM LEASING CORP.

By \_\_\_\_\_

Title \_\_\_\_\_